Coburn v. *Shilling*, 138 Md. 177, 113 Atl. 761. See *Cannon* v. *Gilmer*, *supra*. This seems unduly hard on the donee. The confidential relationship alone is of no probative force in showing improper circumstances attending a gift. On the other hand, gifts entirely proper may be upset simply because the donee, as conceivably could often be the case, can adduce no affirmative evidence to the effect that the donor was thoroughly advised as to the significance of his acts and acted voluntarily. But where, in addition to the confidential relation, suspicious circumstances attend a gift, as in the principal case an unexplained "arrangement," the courts seem justified in placing the burden of explaining such circumstances upon the donee. *Cf. Coburn* v. *Shilling*, *supra*. What are such suspicious circumstances must depend on the facts of each case. See 4 WIGMORE, EVIDENCE, § 2503.

CONTEMPT OF COURT — INTERFERENCE WITH THE ENFORCEMENT OF A JUDGMENT IN A CRIMINAL CASE. — One X was sentenced by the plaintiff judge to a term of imprisonment for speeding. On his arrival at the parish jail he was set free in consequence of a pardon issued by the defendant mayor. The pardon was invalid. The defendant was adjudged to be guilty of a contempt of court. He sued out a writ of *certiorari*. *Held*, that the decision be reversed. *Hundley* v. *Foisy*, 91 So. 164 (La.).

For a discussion of the principles involved, see NOTES, *supra*, p. 93.

CONTEMPT OF COURT — LIBELLOUS PUBLICATION UPON A PARTY AFTER JUDGMENT. — The plaintiff had brought an action against the defendant to invalidate a ballot taken by the defendant on several grounds, one of them being fraud. The charges of fraud at the trial could not be sustained. The plaintiff then published a circular inaccurately reporting the proceedings and insinuating that the defendant was nevertheless guilty of the alleged fraud. The defendant now seeks an injunction to restrain the distribution of the circular as being a contempt of court. *Held*, that the petition be dismissed. *Dunn* v. *Bevan*, 127 L. T. R. 14.

For a discussion of the principles involved, see NOTES, *supra*, p. 93.

CONSTITUTIONAL LAW POWERS OF THE EXECUTIVE — MARTIAL LAW — DENIAL OF *HABEAS CORPUS* TO CIVILIAN SENTENCED BY MILITARY COMMISSION. — The defendants, civilian citizens, were convicted and imprisoned for offences against military regulations by a military commission occupying Nebraska City in accordance with the governor's proclamation declaring martial law effective there. After the military authorities had been withdrawn, the defendants petitioned the federal court for a rule to show cause why a writ of *habeas corpus* should not be issued, on the ground that their rights under the Fourteenth Amendment had been violated. *Held*, that the petition be dismissed. *U. S. ex rel Seymour* v. *Fisher*, 280 Fed. 208 (D. Neb.).

The governor's discretion in calling out the state militia is not judicially reviewable. *U. S. ex rel McMaster* v. *Wolters*, 268 Fed. 69 (S. D. Tex.); *In re Boyle*, 6 Ida. 609, 57 Pac. 706; *Moyer* v. *Peabody*, 212 U. S. 78. It is also recognized that the military authorities may detain civilian prisoners as a preventive measure. *In re Moyer*, 35 Colo. 159, 85 Pac. 190; *Ex parte Milligan*, 4 Wall. (U. S.) 2, 127. See 26 HARV. L. REV. 636. But the punitive power of martial law is not generally conceded. See 28 HARV. L. REV. 415; 34 HARV. L. REV. 659. Some jurisdictions have denied it, and allowed *habeas corpus* to civilian prisoners sentenced by military authorities. *Ex parte McDonald*, 49 Mont. 454, 143 Pac. 947. *Cf.*

Ex parte Milligan, supra. Other courts have sanctioned such military sentences. *State* v. *Brown*, 71 W. Va. 519, 77 S. E. 243; *U. S. ex rel McMaster* v. *Wolters*, 268 Fed. 69 (S. D. Tex.). The issue has been distinguishable in these cases, however, in that the writ was sought while martial law was still effective. The principal case is the first to clearly question the constitutionality of continued imprisonment after the restoration of civil order. But see *Ex parte Ortiz*, 100 Fed. 955 (Circ. Ct., D. Minn.). Since it is public danger which warrants the substitution of executive process for judicial process, there is no reason why a jury trial should not be granted when the emergency is relieved. See *Moyer* v. *Peabody, supra*, 85. The power to try is not essential to martial rule as long as the power to detain is unhampered. The decision in the instant case is therefore unnecessary and unfortunate.

EQUITABLE SERVITUDES — CHATTELS. — The plaintiff sold cigarettes to a purchaser subject to a restrictive agreement that they were not to be sold within the United States but were for export only. The purchaser resold them to the defendant who had notice of the restriction. The defendant advertised them for sale in the United States. The plaintiff moved for a preliminary injunction restraining the defendant from importing the cigarettes which had been shipped abroad, and selling them in the United States. *Held*, that the injunction be granted. *P. Lorillard Co.* v. *Weingarden*, 280 Fed. 238 (W. D. N. Y.).

Courts have not been inclined to enforce restrictive covenants on chattels once they have left the hands of the purchaser who agreed to the restriction. *Garst* v. *Hall & Lyon Co.*, 179 Mass. 588, 61 N. E. 219; *Apollinaris Co.* v. *Scherer*, 27 Fed. 18 (Circ. Ct., S. D. N. Y.); *McGruther* v. *Pitcher*, [1904] 2 Ch. 306; *Taddy & Co.* v. *Sterious & Co.*, [1904] 1 Ch. 354. See *Park & Sons Co.* v. *Hartman*, 153 Fed. 24, 39 (6th Circ.). One reason offered is that to do so will prevent the purchaser from enjoying the full benefits that usually accompany the ownership of chattels. While this is true, it is warranted because designed to protect the seller in his business. The second objection is that such covenants are unduly in restraint of trade and tend toward monopoly. If this be so, the court in each case can keep the agreements within their proper sphere by refusing to enforce those which are as a fact unduly in restraint of trade. *Dr. Miles Medical Co.* v. *Park & Sons Co.*, 220 U. S. 373. But where the only effect of the agreement is to keep a particular lot of stale cigarettes off a market in which fresh lots of the same brand are being offered for sale without any restrictions this objection cannot be urged. See 3 WILLISTON, CONTRACTS, §§ 1636, 1639. If, then, the agreement is valid at law, there is no reason why equity should refuse relief when a case of irreparable injury, the loss of good will, is made out. A business may be the dominant tenement of an equitable servitude. *Palumbo* v. *Piccioni*, 89 N. J. Eq. 40, 103 Atl. 815; *Francisco* v. *Smith*, 143 N. Y. 488, 38 N. E. 980. There is nothing in the nature of a chattel which prevents it from being the servient tenement. *Murphy* v. *Christian etc. Co.*, 38 App. Div. 426, 56 N. Y. Supp. 597; *Authors & Newspapers Ass'n* v. *O'Gorman Co.*, 147 Fed. 616 (Circ. Ct., D. R. I.).

EVIDENCE — JUDGMENTS — ADMISSIBILITY IN SUIT BETWEEN DEFENDANT IN PRIOR SUIT AND STRANGER. — The plaintiff assigned a second mortgage to the defendant bank as security for a loan and having paid the loan sued for the wrongful discharge of the mortgage. The defendant to negative the damage to the plaintiff offered in evidence a decree obtained by a creditor of the mortgagor against the present plaintiff declaring